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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,562	07/07/2003	Paul F. Van Epps	PFV-127	5829
37282	7590	12/18/2006	EXAMINER	
HOWARD J. GREENWALD P.C. 349 W. COMMERCIAL STREET SUITE 3075 EAST ROCHESTER, NY 14445-2408			GIRARDI, VANESSA MARY	
			ART UNIT	PAPER NUMBER
			2833	

DATE MAILED: 12/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/614,562	VAN EPPS, PAUL F.
	Examiner Vanessa Girardi	Art Unit 2833

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-17 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 07 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____. 5) <input type="checkbox"/> Notice of Informal Patent Application
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	6) <input type="checkbox"/> Other: _____. Paper No(s)/Mail Date _____. Information Disclosure Statement(s) (PTO/SB/08)

## DETAILED ACTION

### ***Specification***

1. The title of the invention is not properly descriptive. By definition a guitar is a *flat-bodied* stringed instrument typically comprising *six* strings; which the claimed invention is not. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: SIMPLE STRING RESONATING INSTRUMENT

2. The disclosure is objected to because of the following informalities:

- a. All references to the claimed invention as a "guitar" are improper in light of the generally accepted definition of a guitar.
- b. Page 5, last paragraph states; "*In the embodiment depicted in Figures 1, 4, and 4, is contiguous with the bottom wall 52 of the can 46.*" The sentence fails to state what exactly is contiguous with the bottom wall of the can.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims.

- Figure 1 fails to show the fastener in a contiguous relation with the bottom wall of the metal can as stated in claim 17. It appears to be contiguous with the neck which is contiguous with the side of the metal can.
- Figure 4 fails to adequately show the relationship of the fastener with the bottom wall of the metal can, it appears to be "floating" within the hollow of the can.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should

not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### *Claim objections*

4. Claims 1-17 are objected to because by definition a guitar is a *flat-bodied* stringed instrument typically comprising *six* strings; which the claimed invention is not. Therefore, stating the claimed invention is a guitar assembly is false.
5. Claims 4 and 12-17 are objected to as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A stated range is an approximation in itself but to further approximate an approximation with the word "about" fails to distinctly claim the subject matter which applicant regards as the invention

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 and 10-12 are rejected under 35 U.S.C. §103(a) as being an obvious variant of Magee (Des. 340,062).

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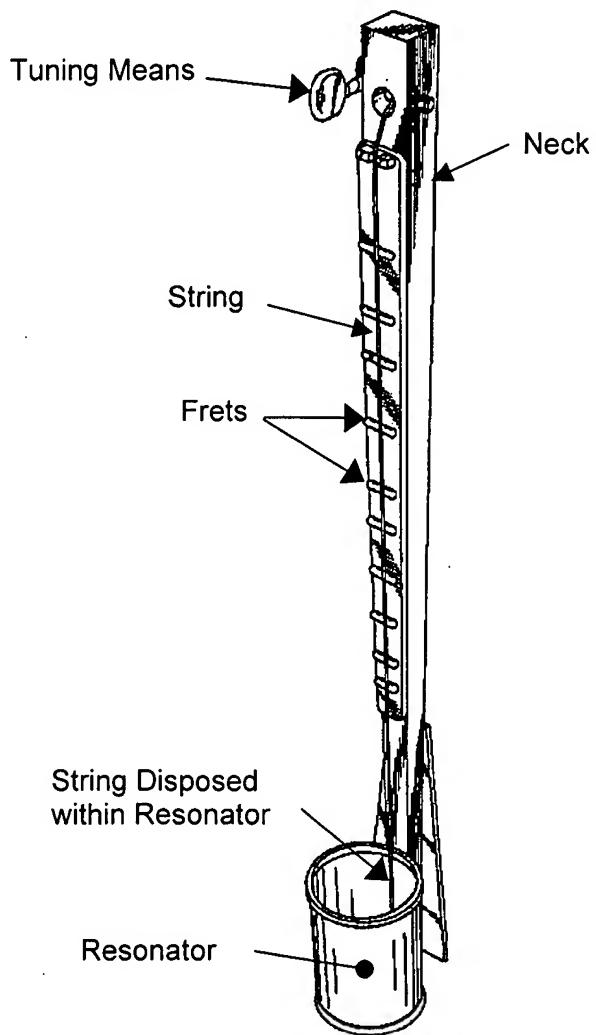
With respect to claim 1; Magee shows an instrument assembly comprised of a neck, a string disposed on the neck, and a resonator, wherein: the resonator is comprised of a cavity defined by an inner wall of the resonator, the string is disposed on the neck, a first portion of the string is disposed within the resonator, and a portion of the string extends through the resonator, and at least three chromatic frets are disposed on the neck.

However Magee does not show the neck is disposed *within* the cavity, attached to and contiguous with the *inner* wall of the resonator.

It has been held *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) the mere rearrangement of parts is not patentability distinct because shifting the position of the neck from the outer wall to the inner wall of the resonator has not been disclosed by the Applicant as a criticality which modifies the operation of the instrument.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made the invention would perform equally well with either configuration.

With respect to claim 10; Magee shows an instrument assembly further comprising a means for tuning the string.



With respect to claim 11 Magee shows (Fig. 4) an instrument assembly wherein the means for tuning the string is comprised of a screw.

With respect to claim 12; Magee shows an instrument assembly wherein from 9 to 15 of the frets are disposed on the neck.

7. Claims 2-7 are rejected under 35 U.S.C. §103(a) as being unpatentable over Magee (Des. 340,062) as discussed in claim 1, in view of Mariner (US 3,788,183).

However Magee does not teach specific materials or measurements regarding the simple string resonating instrument assembly shown.

With respect to claim 2; Mariner shows an instrument assembly wherein the neck **S** consists essentially of wood (COL. 3, LINES 11-15).

With respect to claim 3; Mariner further shows the neck **S** has a substantially square cross sectional shape (FIG. 15).

With respect to claim 4; Mariner further shows the neck has a length of from about 30 to about 40 inches (COL. 3, LINES 20-22).

With respect to claims 5 - 7; it is noted Mariner teaches the wood is a hardwood (COL. 3, LINE 14). Regarding the limitation of claim 6; Examiner takes official notice of the fact that poplar, oak and maple are well-known common hardwoods, as substantiated by the List of Woods included among the References Cited in this action.

However criticality is lacking pertaining to claim 7 wherein the wood is a soft wood in light of claim 5 stating the wood is a hardwood.

Therefore the only criticality in meeting the objectives of the claimed subject-matter is that the material in question is wood, which Mariner fully discloses for purposes of using a rigid

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material which is capable of transmitting vibrations from strings (COL. 3, LINES 11-15) having a substantially square cross section (COL. 3, LINES 22-23) which Mariner teaches for proper overlay of the strings onto a neck whose length is in keeping with a comparable instrument (COL. 3, LINES 20-22) thus producing a stringed instrument having a simplified construction having comparable tones of conventional stringed instruments (COL. 1, LINES 55-60).

8. Claims 8 and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Magee (Des. 340,062) and Mariner (US 3,788,183) as applied to claim 2 above, and further in view of Shibato et al. (US 6,797,391 B2). However neither Magee nor Mariner discuss coating the wood portion of the instrument assembly.

With respect to claims 8 and 9; Shibato et al. teaches a coating for wood, specifically musical instruments (COL. 19, LINES 4-9). Wherein the coating is a polyurethane coating (COL. 18, LINES 29-47).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to further coat the wood neck of the Magee / Mariner instrument assembly as taught by Shibato et al. for the purpose of enhancing the finished appearance as well as protecting the wood portion of the instrument (COL. 19, LINES 14-67).

9. Claims 13-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Magee (Des. 340,062) and Mariner (US 3,788,183) as applied to claim 12 above, and further in view of Benner (US3,318,181).

With respect to claim 13; neither Magee nor Mariner show or teach the resonator is a metal can. Benner shows an analogous instrument assembly wherein the resonator is a metal can (COL. 2, LINES 13-15).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time

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the invention was made to further fashion the resonator of the Magee / Mariner instrument assembly using a metal can as taught by Benner for the purpose providing a relatively inexpensive instrument having excellent tonal qualities (COL. 1, LINES 45-47).

With respect to claims 14 and 15; Magee shows the resonator is comprised of a bottom wall (FIG. 6) and a side wall (FIG. 7) having a substantially cylindrical shape.

With respect to claim 16; (FIGURES 6 AND 7) of Magee imply there exists the means for connecting a portion of the string to the bottom wall of the metal can.

With respect to claim 17; neither Magee nor Mariner show or teach comprising the instrument assembly having a ball end fastener contiguous with the string and the bottom wall of the metal can. Benner teaches an analogous instrument assembly having a ball end fastener with a hollowed out portion used to ensure continuity between the string and the wall of the metal can.

Therefore , it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the fastener for the string portion of the instrument assembly as taught by Benner (COL. 1, LINES 24-27) to construct a relatively simple instrument that is inexpensive and enjoyable.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanessa Girardi: Telephone number (571) 272-5924.

Monday – Thursday 7 a.m. to 5:30 p.m. (EST)

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Paula Bradley can be reached on (571) 272-2800 ext 33.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*VG*  
Art Unit 2833  
November 30, 2006



THO D. TA  
PRIMARY EXAMINER